

**UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA**

MARK BUSKIRK, )  
Plaintiff )  
v. )  
VERDE ENERGY USA, INC., ) Case No.:  
Defendant ) COMPLAINT AND DEMAND FOR  
                                  ) JURY TRIAL  
                                  )

**COMPLAINT**

MARK BUSKIRK (“Plaintiff”), by and through his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against VERDE ENERGY USA, INC. (“Defendant”):

## INTRODUCTION

1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*

## **JURISDICTION AND VENUE**

2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See  
Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

3. Defendant conducts business in the Commonwealth of Pennsylvania and as such, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

## PARTIES

5. Plaintiff is a natural person residing Hanover Township, Pennsylvania 18706.

6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

7. Defendant is a corporation that has its office located in Norwalk, Connecticut 06851.

8. Defendant is a “person” as that term is defined by 47 U.S.C. §153(39).

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

## **FACTUAL ALLEGATIONS**

10. Plaintiff has a cellular telephone number that he has had for more than one year.

11. Plaintiff has only used this number as a cellular telephone number.

12. The phone number has been assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls.

13. Beginning in April 2015 and thereafter, Defendant called Plaintiff on his cellular telephone number.

14. When contacting Plaintiff on his cellular telephone, Defendant used an automatic telephone dialing system and automatic and/or pre-recorded messages.

15. Defendant's telephone calls were not made for "emergency purposes."

16. Defendant's pre-recorded and/or automated messages would state its name and that its call was "for cheaper energy rates."

17. In mid-April 2015, Plaintiff spoke to one of Defendant's employees and advised Defendant to stop calling his cellular telephone number.

18. Defendant, however, ignored Plaintiff's revocation of consent and continued to place calls to his cellular telephone.

19. Defendant's calls were so persistent that Plaintiff was forced to block the above referenced number to avoid future calls.

20. Defendant called Plaintiff approximately fifteen (15) additional times after he spoke with its employee and revoked consent to call his cellular telephone.

21. Most recently, Defendant called Plaintiff on May 19, 2015, on his cellular telephone.

**DEFENDANT VIOLATED THE  
TELEPHONE CONSUMER PROTECTION ACT**

22. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein

23. Defendant initiated multiple automated telephone calls to Plaintiff's cellular telephone using a prerecorded voice

24. Defendant initiated these automated calls to Plaintiff using an automatic telephone dialing system.

25. Defendant's calls to Plaintiff were not made for emergency purposes.

26. Defendant's calls to Plaintiff, in and after mid-April 2015, were not made with Plaintiff's prior express consent.

27. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.

28. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

29. As a result of the above violations of the TCPA, Plaintiff has suffered the losses and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles damages.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff, MARK BUSKIRK, respectfully prays for a judgment as follows:

a. All actual damages suffered pursuant to 47 U.S.C. § 227(b)(3)(A);

- 1 b. Statutory damages of \$500.00 per violative telephone call
- 2 pursuant to 47 U.S.C. § 227(b)(3)(B);
- 3 c. Treble damages of \$1,500.00 per violative telephone call
- 4 pursuant to 47 U.S.C. §227(b)(3);
- 5 d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
- 6 e. Any other relief deemed appropriate by this Honorable Court.

8 **DEMAND FOR JURY TRIAL**

9 PLEASE TAKE NOTICE that Plaintiff, MARK BUSKIRK, demands a jury  
10 trial in this case.

12 RESPECTFULLY SUBMITTED,

13 DATED: 07-15-15

KIMMEL & SILVERMAN, P.C.

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